

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-06-28,366

RH-TP-06-28,577

In re: 301 G Street, S.W.

Ward Six (6)

ARLENA CHANEY, ET AL
Tenant/Appellant/Cross-Appellee

v.

AMERICAN RENTAL MANAGEMENT COMPANY
Housing Provider/Appellee/Cross-Appellant

ORDER ON MOTION FOR CONTINUANCE

March 4, 2013

YOUNG, COMMISSIONER. This case is on appeal from the District of Columbia Office of Administrative Hearings (OAH), based on a petition filed in the Rental Accommodations and Conversion Division (RACD), Housing Regulation Administration (HRA), of the District of Columbia Department of Consumer and Regulatory Affairs (DCRA).¹ The applicable provisions of the Rental Housing Act of 1985 (Act), D.C. LAW 6-10, D.C. OFFICIAL CODE §§ 42-3501.01,-3509.07 (2001), the District of Columbia Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE §§ 2-501 - 2-510 (2001), and the District of Columbia Municipal Regulations (DCMR), 1 DCMR §§ 2800-2899 (2004), 1 DCMR §§ 2920-2941 (2004), 14 DCMR §§ 3800 - 4399 (2004) govern these proceedings.

¹ OAH assumed jurisdiction over tenant petitions from RACD pursuant to the OAH Establishment Act, D.C. OFFICIAL CODE § 2-1831.01, -1831.03(b-1)(1) (Supp. 2005). The functions and duties of RACD were transferred to the Department of Housing and Community Development (DHCD) by the Fiscal Year Budget Support Act of 2007, D.C. Law 17-20, 54 DCR 7052 (September 18, 2007) (codified at D.C. OFFICIAL CODE § 42-3502.03a (2001 Supp. 2008)).

On February 28, 2013, Counsel for the Tenants/Appellants/Cross-Appellees, Arlena Chaney, et al., filed in the Commission an Emergency Motion to Set New Hearing Date and for Leave to File A Supporting Brief within 5 Days (Emergency Motion). The Emergency Motion sought a continuance for the hearing scheduled for Thursday, March 7, 2013. Counsel, Jamil Zouaoui, requested that the Commission set a new hearing date, and for leave to file a supporting brief with five (5) days of the order on his motion. As reason for the continuance, and leave to file a brief out of time, counsel stated:

On the date upon which the Rental Housing Commission sent out the Notice of Certification of the Record in In re 301 G Street, SW Consolidated ... the undersigned counsel was out of the country on business for 16 days ... departing on February 10, 2013, and returning on February 26th 2013.

Emergency Motion at 1. Attached to Mr. Zouaoui's Emergency Motion, was a flight reservation indicating that counsel departed Washington, D.C., on Sunday, February 10, 2013, in route to Casablanca, Morocco. The reservation also indicated counsel's return to Washington, D.C., on Tuesday, February 26, 2013.

On March 1, 2013, counsel for the American Rental Management Company, the Housing Provider, filed an opposition to the Emergency Motion. The opposition stated:

Notice of the argument was issued on February 13, 2013. That being the case, Mr. Zouaoui had an obligation to familiarize himself with the Commission's rules so he could be prepared to timely file a brief. That he failed to do so is not justification for granting emergency relief. Prior to the notice being issued, undersigned counsel was contacted as to availability for the argument, as is the practice of the Rental Housing Commission. Undoubtedly, Mr. Zouaoui was also contacted before a hearing date was scheduled. ... It is prejudicial to the ARMC and the owner of the Housing Accommodation to continue to delay the resolution of a case which has been pending for seven years.

Opposition to Emergency Motion to Set New Hearing Date and for Leave to File A Supporting Brief within 5 Days at 1-2.

The applicable Commission rules state:

Any party may move to request a continuance of any scheduled hearing or for extension of time to file a pleading, other than a notice of appeal, or leave to amend a pleading if the motion is served on opposing parties and the Commission at least five (5) days before the hearing or the due date; however, in the event of extraordinary circumstances, the time limit may be shortened by the Commission.

14 DCMR § 3815.1(2004)

Motions shall set forth good cause for the relief requested.

14 DCMR § 3815.2 (2004)

Conflicting engagements of counsel, absence of counsel, or the employment of new counsel shall not be regarded as good cause for continuance unless set forth promptly after notice of the hearing has been given.

14 DCMR § 3815.3 (2004),

Administrative tribunals “must be, and are, given discretion in the procedural decisions made in carrying out their statutory mandate.” Prime v. D. C. Dep’t of Pub. Works, 955 A.2d 178 (D.C. 2008) (*quoting* Ammerman v. D. C. Rental Accommodations Comm’n, 375 A.2d 1060, 1063 (D.C. 1977); *cited in* Carpenter v. Markswright Co., RH-TP-10-29,840 (Feb. 14, 2013)). Continuances are committed to the sound discretion of the Commission. Prime, 955 A.2d at 178. *See, also*, King v. D. C. Water and Sewer Auth., 803 A.2d 966, 968 (D.C. 2002).

Counsel for the Tenant has requested a continuance on the grounds that he was out of the United States when the Commission’s Notice of Scheduled Hearing was transmitted to him on February 14, 2013. He further states that he was out of the country until February 26, 2013, and requests this emergency continuance of the hearing scheduled in the Commission’s hearing room

at 2:00 p.m., on Thursday, March 7, 2013. Counsel for the Housing Provider correctly states that it is the Commission's practice to contact the parties to determine a hearing date and time convenient for both parties. However, in the instant case, the Commission was unable to contact counsel for the Tenant, and set the March 7, 2013, without consultation with him.

Based upon its review of the request for the continuance, the Commission is persuaded to grant a reasonable continuance because of (1) the lack of any evidence of less than "good faith" by Tenant's counsel in requesting the Continuance, (2) the appropriately prompt response of Tenant's counsel in filing the request for Continuance upon his return to the United States, and (5) the Commission's interest in providing each party a full and fair opportunity to appear before the Commission regarding the appeal. *See, e.g., Taylor v. Cummings*, RH-TP-08-29,345 (RHC June 2, 2011); *Carpenter*, RH-TP-10-29,840 (Feb. 14, 2013).

The Commission hereby grants the Tenant's Emergency Motion for Continuance, and will re-schedule the hearing on this case to a later date which is mutually agreed upon by the parties and which otherwise meets all Commission hearing requirements and schedules. The parties are requested to provide the Commission, orally or in writing, with a mutually acceptable hearing date by no later than 4:30 P.M. on Thursday, March 7, 2013. The Commission will

notify the parties in writing of the date and time of the re-scheduled hearing. The re-scheduled hearing will be at the Commission's offices, located at Suite 1140BN, 441 4th Street, N.W., Washington, D.C. The Commission will not grant any further continuance to either party except under extraordinary circumstances.

SO ORDERED.

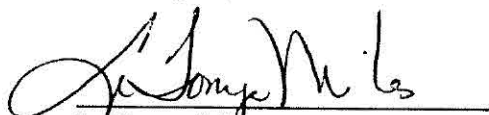

RONALD A. YOUNG, COMMISSIONER

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **ORDER ON MOTION FOR CONTINUANCE** in RH-TP-06-28,366 and RH-TP-06-28,577 was mailed, postage prepaid, by first class U.S. mail on this 4th day of **March, 2013** to:

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